IRVIN WALL

IBLA 82-1060 Decided December 28, 1982

Appeal from decision of the Oregon State Office, Bureau of Land Management, rejecting noncompetitive over-the-counter oil and gas lease offer OR 32716.

Affirmed in part; dismissed in part.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to

   Land included within an outstanding oil and gas lease, whether void, voidable, or valid, is not available for leasing, and an application filed for such land must be rejected. Even if the outstanding lease were canceled, the land would not be available for over-the-counter leasing, since land within a canceled lease may be leased again only in compliance with the drawing procedure established by 43 CFR 3112.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: 640-acre Limitation

   It is proper to issue an oil and gas lease for less than 640 acres where the land is surrounded by lands not available for leasing.

APPEARANCES: Irvin Wall, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Irvin Wall has appealed the June 28, 1982, decision of the Oregon State Office, Bureau of Land Management (BLM), rejecting in part his oil and gas lease offer OR 32716 to the extent that it included land within oil and gas leases OR 22530 and OR 27243. In his statement of reasons, Wall asserts that lease offer OR 22530 should be rejected because the applicant failed

to state or refer to qualifications to acquire the lease. He asserts that OR 27243 should be rejected because it was filed on a 40-acre tract when the adjacent acreage was available.

[1] Oil and gas lease OR 22530 was issued to Paul R. Colacecchi on July 8, 1981, effective August 1, 1981, pursuant to an offer filed on September 28, 1979. Wall's offer was not filed until September 2, 1981, after the lease was issued to Colacecchi. Regardless of any deficiencies in Colacecchi's offer, 1/ Wall's application would have to be rejected. Land included within an outstanding oil and gas lease is not available for leasing regardless of whether that lease is void, voidable, or valid. See Irvin Wall, 67 IBLA 301, 303 (1982); Paiute Oil and Mining Co., 67 IBLA 17 (1982); Leonard R. McSweyn, 26 IBLA 376 (1976); John F. Brown, 22 IBLA 133 (1975). Even if Colacecchi's lease were improperly issued and subject to cancellation, Wall could not benefit, since the land would not be available for over-the-counter leasing. 2/ Land in a canceled lease may be leased again only in compliance with the drawing procedure established by 43 CFR 3112. John F. Brown, supra.

[2] We turn to Wall's objection to issuance of oil and gas lease OR 27243 to Western Reserves Oil Company (Western). Western filed its offer on June 9, 1981, for 640 acres. BLM rejected that offer for all the land except for an isolated 40-acre parcel for which a lease was issued on June 9, 1982, effective July 1, 1982. Wall's objection that Western's lease only covers 40 acres and that other land was available provides no basis for rejecting Western's offer. Departmental regulation, 43 CFR 3110.1-3(a), provides, inter alia, that no offer may be made for less than 640 acres, except where the land is surrounded by land not available for leasing under the Act. Western's offer complied with this requirement because it described 640 acres. Moreover, the 40-acre parcel for which the lease was issued was isolated; no adjacent land was available. It is proper to issue an oil and gas lease for less than 640 acres where the land is surrounded by lands not available for leasing. See Dayton F. Hale, 69 IBLA 167 (1982).

Because a noncompetitive oil and gas lease may only be issued to the first-qualified applicant, 43 U.S.C. § 226(c) (1976), a junior offer is properly rejected to the extent that it includes land designated in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective. Irvin Wall, 68 IBLA 243 (1982).

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1/ The offer was filed by Colacecchi on his own behalf, and no statement of qualifications was necessary beyond that indicated on the face of the form. 43 CFR 3102.2-1(c). Wall's objection to Colacecchi's lease is therefore incorrect.

2/ In his concurring opinion Administrative Judge Stuebing questions Wall's standing to appeal. We think a person whose offer has been rejected, for whatever reason, is clearly one who is adversely affected. See also, Pacific Legal Foundation v. Watt, 529 F. Supp. 982, 990-93 (D. Mont. 1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals for the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed with respect to the conflict between Wall's offer and lease OR 22530; the decision appealed from is otherwise affirmed.

Will A. Irwin
Administrative Judge

I concur:

James L. Burski
Administrative Judge

ADMINISTRATIVE JUDGE STUEBING CONCURRING IN THE RESULT:

The main opinion is clearly correct in its analysis of the facts and applicable law, and properly affirms BLM's decision. However, I wish to present an additional observation.

As noted in the main opinion, "Even if Colacecchi's lease were improperly issued and subject to cancellation, Wall could not benefit, since the land would not be available for over-the-counter leasing." (It will be remembered that the land was already under lease to Colacecchi at the time Wall filed his lease offer.) Therefore, even assuming that Colacecchi's lease had been improvidently issued, and was then canceled, the land could not be leased to Wall in response to Wall's offer, but would have to be made available for the simultaneous filing of lease applications and awarded on the basis of the results of a drawing.

As no relief can be accorded Wall in consequence of his appeal with respect to the land leased to Colacecchi, his standing to appeal is brought into question. See Irvin Wall, 67 IBLA 301, 303 (1982). Although it may be argued that Wall was "adversely affected" so as to have standing under 43 CFR 4.410 to appeal BLM's rejection of his offer to the extent of its conflict with Colacecchi's (see n. 2/ of the main opinion), Wall's interest is no different from that of anyone who protests issuance of a lease to someone else, but who can in no way benefit from cancellation of the lease. Since such a protest creates no interest that is adversely affected by its dismissal, neither did Wall's offer, since it was filed after the lease had already issued. A recent court decision analyzes the issue of a plaintiff's standing to seek cancellation of a lease where the plaintiff could not benefit from the cancellation:

> The only possible consequences of lease cancellation are that the lease would be withdrawn, offered at a competitive bid or made available for a new simultaneous draw. 43 C.F.R. § 3112.1. See Geosearch, Inc. v. Andrus, [508 F. Supp. 839, 845, D. Wyo. 1981]. None of these exigencies would extend any concrete benefit to plaintiff or increase in any measurable way the likelihood that the lease would ultimately be granted to Naartex or Huff. It is evident, then, that the present and prospective plaintiffs, unable to explain how any actual injury they have suffered can be remedied by this court, lack standing to prosecute this action. See Pullman v. Chorney, 509 F. Supp. 162 (D. Colo. 1981).

Naartex Consulting Corp. v. Watt, 542 F. Supp. 1196, 1206 (D.D.C. 1982).

In Pullman v. Chorney, supra, the Court said:

> Even assuming that the plaintiff could successfully avoid dismissal on the foregoing grounds, however -- which this Court need not and does not decide -- the plaintiff would not have standing to proceed with this lawsuit.

> [4] The reason that standing is the first issue the Court must address is that "[s]tanding to sue, like mootness and ripeness," . . . has its constitutional origins in the "case or controversy" limitations of Article III which insures that courts exercise their power only in cases where true adversary context allows informed judicial resolution." Wiley v. National Collegiate Athletic Association, 612 F.2d 473, 475 (10th Cir. 1979)." Citizens Concerned for Separation of Church and State v. City and County of Denver, 628 F.2d 1289, 1294 (10th Cir. 1980). If the plaintiff has no legal standing to raise the issues pleaded in the complaint, this Court cannot reach the merits of those issues.
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> Even assuming that the plaintiff has alleged a "distinct and palpable injury," however, this Court cannot perceive that the plaintiff has established the requisite connection between the claimed injury and the challenged conduct, or as that requirement has also been stated, "that the exercise of the Court's remedial powers would redress the claimed injuries." Id., 438 U.S. at 74, 98 S.Ct. at 2630. See also Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 43, 96 S.Ct. 1917, 1926, 48 L.Ed.2d.450 (1976). [Emphasis added.]

Id. at 166.

Thus, the Court declares that being injured ("adversely affected") is insufficient to confer standing to appeal where the appellate tribunal has no means of remedying the injury by granting the relief sought. The Court then continued, saying:

> Even if none of the three drawees ultimately obtains a lease, the remaining applicants have no chance of leasing the parcel pursuant to that drawing. At best, the parcel may be reoffered in a subsequent drawing, but even that is a matter committed to the discretion of the Secretary. Therefore, nothing this Court is empowered to do could redress the injury alleged by the plaintiff.
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> * * * Obviously, the standing of a second drawee who has timely challenged the issuance of the lease, cf. Geosearch, Inc. v. Andrus, is a totally different matter from that of an unsuccessful applicant who has no possibility of directly obtaining the lease even if the initial lease is cancelled.
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> Based on the foregoing analysis, the Court has determined that the plaintiff lacks standing to sue for the relief sought in this action. [Emphasis by the Court; footnote omitted.]

Id. at 167-68.

Accordingly, I would hold that where an over-the-counter offer to lease Federal lands for oil and gas is rejected in whole or in part because it includes lands already embraced in an existing oil and gas lease which issued prior to the filing of the rejected offer, an appeal by the offeror which seeks cancellation of the issued lease because of some alleged impropriety in its issuance should be dismissed, as the appellant cannot gain any right to lease the lands pursuant to his offer in any event.

My espousal of this issue is no mere idle preoccupation with a trivial procedural nicety. This Board encounters numerous cases where the rule would apply. As an example, consider a mining claimant who has had his claim declared null and void by BLM because it is situated on land that was patented 50 years ago with no reservation of minerals to the United States. Even if the claimant alleges and offers to prove that the patent issued in error, no remedy is available. It would therefore be a waste of the Board's time, as well as the appellant's, to undertake an examination of the merits of his appeal. I would prefer to hold simply that he lacks standing to have the issue considered.

Regardless of my concern for the question of standing, I concur in the result reached by the majority.

Edward W. Stuebing
Administrative Judge.